



INTERIOR BOARD OF INDIAN APPEALS

Estate of Sophie Iron Beaver Fisherman

2 IBIA 83 (10/16/1973)

Also published at 80 Interior Decisions 665



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF SOPHIE IRON BEAVER FISHERMAN

(Cheyenne River No. 2335, Deceased)

IBIA 73-11

Decided October 16, 1973

Petition to reopen estate.

Denied.

Indian Probate: Reopening: Generally

In the absence of compelling reasons and failure to allege the existence of a manifest injustice or how it might be corrected if reopening were permitted, a petition to reopen will be denied when it is filed more than three years after the final determination of heirs was made.

Indian Probate: Reopening: Waiver of Time Limitation

Petition to reopen filed more than three years after the final determination will not be granted unless there is compelling proof that the delay was not occasioned by the lack of diligence on the part of one who is petitioning.

APPEARANCES: James L. Claymore, Superintendent, Cheyenne River Agency, for Joseph Fisherman, Deceased.

OPINION BY MR. WILSON

This matter comes before the Board on a petition to reopen filed by James L. Claymore, Superintendent, Cheyenne River Agency, Eagle Butte, South Dakota.

The record indicates a hearing was held and concluded in this estate at Eagle Butte, South Dakota, on July 19, 1966. Thereafter, on November 23, 1966, an order determining heirs was entered in the matter by an Administrative Law Judge.

In the absence of any interim petitions filed pursuant to 25 CFR 15.18(a) (superseded by 43 CFR 4.242(a)), the estate herein was closed at the expiration of the three-year period on November 23, 1969.

The Superintendent, in support of the petition sets forth the following reason:

Joseph Fisherman, C.R. - 3619, born 5/6/15, son of a predeceased son was omitted from the estate and should be included.

The petition further indicates the purpose of the petition is to correct the erroneous determination of heirs.

It is noted from collateral data that Joseph Fisherman died May 29, 1972, thereby explaining why the petition is filed by the Superintendent

There is nothing in the record or in the petition indicating that Joseph Fisherman, during his lifetime, was under a disability due to minority or lack of competence which would have prevented him from objecting to the findings of November 23, 1966.

Moreover, the failure of Joseph Fisherman, up until the time of his death on May 29, 1972, to pursue any right or claim he may have had in the estate during the three-year period required by 43 CFR 4.242(a) (formerly 25 CFR 15.18(a)), clearly indicates lack of diligence on his part.

The Superintendent has not shown the existence of a manifest injustice resulting from the omission of the said Joseph Fisherman as an heir in the estate.

The Department of the Interior over the years has adopted a strict policy of refusing to entertain appeals not timely filed. Estate of Ralyen or Rabyea Voorhees, 1 IBIA 62 (1971). The same policy is applicable to petitions for reopening filed beyond the three-year limitation provided in the regulations, Estate of George Minkey, 1 IBIA 1 (1970).

The Board is not unmindful of the power of the Secretary to waive and make exception to these regulations in Indian probate matters. ^{1/} However, such authority will be exercised only in cases where the most compelling reasons are present. Estate of Charles Ellis, IA-1242 (April 14, 1966); Estate of George Minkey, *supra*.

^{1/} 25 CFR 1.2.

Reopening, in excess of the three-year limitation, will be permitted only where it appears that the party seeking relief has not been dilatory in seeking his remedy. Estate of Alvin Hudson, IA-P-17 (May 29, 1969); Estate of George Squawlie (Squally), IA-1231 (April 5, 1966); Estate of George Minkey, *supra*.

The petition of the Superintendent clearly falls short of meeting the standards set forth in the cases cited above and accordingly, the petition must be denied.

NOW, THEREFORE, pursuant to the authority delegated to the Board of Indian Appeals, 211 D.M. 13.5; F.R. 12081, the petition to reopen filed herein under date of July 25, 1972, by the Superintendent, Cheyenne River Agency, is hereby DENIED and the order determining heirs dated November 23, 1966, is AFFIRMED.

This decision is final for the Department.

//original signed
Alexander H. Wilson, Member

I concur:

//original signed
Mitchell J. Sabagh, Member